No. 83-502

In The

Supreme Court of the United States

October Term, 1983

—o—

FIELD COMMUNICATIONS CORPORATION and LLOYD GEORGE PARRY,

Petitioners,

vs.

THE HONORABLE JOSEPH P. BRAIG,

Respondent.

—o—

BRIEF FOR RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI

—o—

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COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

Whether a broadcaster has a constitutionally protected right to broadcast defamatory remarks about a judge when that judge has called the nature of the remarks to the attention of the broadcaster and requested that such remarks not be broadcast in the future.

Whether in viewing the evidence and all inferences arising therefrom in the light most favorable to respondent, there appears a genuine issue of fact from which a jury could reasonably find actual malice with convincing clarity on the part of petitioners, Lloyd George Parry ("Parry") and Field Communications Corporation ("Field").

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OPINIONS BELOW

The opinion of the Court of Common Pleas of Philadelphia County, which is not recorded, is set forth in the Appendix filed by Petitioners at pages 22 through 33. The opinion of the Superior Court is reported at 456 A. 2d 1366 (Pa. Super, 1983). The Order of the Superior Court

denying reargument is set forth in the Appendix at page 37. Copies of the orders of the Pennsylvania Supreme Court denying without opinion petitions of Field Communications Corp. and Lloyd George Parry for allowance of appeal are set forth in the Appendix at pages 38 and 39.

JURISDICTION

Jurisdiction is sought to be invoked pursuant to the provisions of 28 U. S. C. § 1257(3).

COUNTERSTATEMENT OF THE CASE

The underlying facts of this case are uncomplicated. The case arose from the death of one Cornell Warren, who was shot by Police Officer Thomas Bowe in the course of an arrest. Police Officer Daryl Bronzeill was Bowe's partner on the day of the shooting. Bowe was tried before the Honorable John A. Geisz and acquitted by a jury in the Philadelphia Court of Common Pleas for Philadelphia County. Police Officer Daryl Bronzeill was separately prosecuted before respondent, the Honorable Joseph P. Braig ("Judge Braig") for recklessly endangering the life of Warren in the case of *Commonwealth v. Bronzeill*, Phila. C.P. No. 78-11-1075-77, November, 1978. Judge Braig made an oral declaration of mistrial on March 29, 1979 and filed a formal opinion on June 11, 1979. His declaration of a mistrial was based on the intentional misconduct of the prosecuting attorney.

A WKBS-TV, Channel 48 television program entitled "On Target—The *Bowe* Case", was taped on September 10, 1979, broadcast on September 23, 1979 and rebroadcast without change on September 29, 1979. The program's single purpose was to discuss the *"Bowe* case" involving the prosecution of Police Officer Bowe for the murder of Warren. The original broadcast of the television program was 30-minutes long and was moderated by Brahin Ahmaddiya, who regularly served as moderator and associate producer of the weekly "On Target" program. The participants in this particular program were Benjamin Johnson, a black criminal defense attorney who had represented Cornell Warren's family and petitioner herein, Philadelphia Assistant District Attorney Lloyd George Parry, who at that time was in charge of the Police Misconduct Unit of the District Attorney's Office. Neither Judge Braig nor the *Bronzeill* case were to be discussed during the program nor did Ahmaddiya announce that the program was to address anything other than the *Bowe* case.

During the course of the program, petitioner Parry made the following gratuitous defamatory remarks about respondent Braig:

> "Parry: I was going to say that if you want to use Judge Braig's statement, you are opening up a whole other area. In fact, it was a whole other case in terms of the presentation that was made to the court. Judge Braig is no friend of the Police Brutality Unit. I don't care who we sent in to try that case; in my opinion, that case is going to get blown out. . . .
>
> Johnson: This is the second time, no matter which judge they have, they accuse the judge of blowing the case out.

> Parry: Judge Geisz didn't blow the case out [referring to the Bowe case]."[1]

These statements were directed to Judge Braig's conduct as a Trial Judge in the *Bronzeill* case. As stated earlier, neither *Bronzeill* nor Judge Braig was the topic of discussion on the program. Judge Braig declared a mistrial in *Bronzeill* for the sole and exclusive reason of a repeated pattern of intentional misconduct. In addition, Parry's defamatory statements about Judge Braig were of no public value, and added nothing to the discussion about the *Bowe* case.

At the time of the taping, publication, and republication of Parry's statements, *Bronzeill* was a pending case before Judge Braig.[2] Judge Braig was, therefore, precluded by the Canons of Judicial Ethics from commenting on the case and was also unable because of the Canons to respond to Parry's remarks in any fashion.[3] Judge Braig

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[1]Judge Braig had declared a mistrial in *Bronzeill* for the sole and exclusive reason of a repeated pattern of intentional prosecutorial conduct by Assistant District Attorney Robert Campolongo, assigned by Parry to try the case. Parry has admitted that Campolongo has had a serious record of reversals for intentional prosecutorial misconduct, that he knew of Campolongo's record and had discussed it with him before the trial of *Bronzeill*.

[2]Parry and others from the District Attorney's Office made repeated attempts to have the *Bronzeill* case retried both before Judge Braig and other judges. The case, however, was *never appealed* and the District Attorney's Office never requested Judge Braig's recusal. The matter remained pending before Judge Braig until October 29, 1979, when he voluntarily recused himself.

[3]Judge Braig argued before both the trial court and the Superior Court that he was not a "public official," as that term

(Continued on next page)

took the only action he could to protect himself. Shortly after the original broadcast on September 23, 1979, Judge Braig telephoned Kenneth T. MacDonald, Vice President and General Manager of Channel 48. He stated that he

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(Continued from previous page)

is defined by defamation law. It is submitted to this Court that while Judge Braig is obviously a "public official" in the common understanding of the term, this is not necessarily true under *New York Times v. Sullivan*, 376 U.S. 254 (1964) and its progeny.

The program on which Parry made his statements was devoted to a discussion of the *Bowe* case. There is no dispute that Judge Braig had no involvement with the *Bowe* case. Thus, he is protected by the same principles announced by the Court in *Time, Inc. v. Firestone*, 424 U.S. 448 (1976), (a person who does not "thrust himself into the forefront of a controversy" is not deemed a public figure), *Id.* at 453.

Since *Gertz v. Robert Welch*, 418 U.S. 323 (1974), the courts have focused primarily upon a person's status in the particular controversy which is connected with the defamatory statements. *Ryder v. Time, Inc.*, 557 F. 2d 824 (D.C. 1976) (an attorney who had been a "public officer" is not a public figure with respect to a magazine article that implied he had been disciplined for concealing stolen property); *Peisner v. Detroit Free Press, Inc.*, 82 Mich. App. 153, 266 N. W. 2d 643 (1968) (well known attorney was not a public figure for purposes of a libel action for an article concerning his representation of an indigent criminal). *See, Gertz, supra*, 418 U.S. at 352: "It is preferable to reduce the public figure question to a more meaningful context by looking to the *nature and extent of an individual's participation in a particular controversy* giving rise to the defamation." (Emphasis added.)

Thus, under defamation law, the term "public official" has a definitional and functional purpose; that is, it is presumed that a public official will have ready access to the media, and will be able to respond meaningfully to charges leveled against him. In the case of a judge, however, as stated earlier, he is prohibited by the Canons of Judicial Ethics from responding to criticisms leveled against him. Judge Braig could not respond to the charges leveled by Parry, and therefore should not be considered a "public official" in this context.

had been told by others that an objectionable reference had been made to him on the "On Target" program which had been aired the previous Sunday. He made it clear that he believed that the reference made to his "blowing a case out" implied that he was corrupt, immoral and unethical.

Judge Braig was additionally concerned because he understood the program was to be rebroadcast. MacDonald acknowledged that it was to be aired again on the coming Saturday, September 29, 1979. MacDonald said he would view the program tape and call Judge Braig the next day. MacDonald then instructed a member of the station crew to make a cassette tape of the program. The next day MacDonald reviewed the tape with Joseph R. Weber, the station's Program Manager. In MacDonald's own words, "When the Judge's name was brought up we played it over a couple times and went over it." MacDonald subsequently reviewed the program by himself.[4]

On September 27, 1979, Judge Braig called MacDonald. MacDonald told Judge Braig he saw nothing objectionable on the tape. Judge Braig asked if he could view the tape. MacDonald refused to allow him to come to the station, but said that he would have a tape cassette of the program promptly *hand delivered* to the Judge. MacDonald verified that the program would be rebroadcast on September 29, 1979, but instead of hand delivering the

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[4]Petitioners casually allude to MacDonald's having "viewed" the tape, when MacDonald himself admitted, and the Superior Court found, that he had watched it over and over.

tape, it was mailed and Judge Braig did not receive the tape until Monday, October 1, 1979.[5]

On February 4, 1981, the trial court held, in granting petitioners' motion for summary judgment, that as a matter of law plaintiff could not prove actual malice against the defendants. The trial court found as a preliminary matter that the words complained of by Judge Braig were capable of a defamatory meaning; that no absolute privilege protected Parry as an Assistant District Attorney; and that no conditional privilege protected Field.

On January 14, 1983, the Superior Court of Pennsylvania entered its order and opinion. The Superior Court agreed with the trial court that the words complained of by Judge Braig were capable of a defamatory meaning. The court also approved of the trial court's holding that no absolute privilege protected Parry as an Assistant District Attorney and no conditional privilege protected Field Communications Corporation. Thus, the Superior Court addressed only the issue of whether the trial court's holding that "as a matter of law plaintiffs cannot prove actual malice against each defendant" justified the entry of summary judgment on behalf of Parry and Field. The Superior Court concluded that the trial court had indeed erred and reversed and remanded for trial.

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[5]Petitioners wish to argue with the facts found by the trial court and the Superior Court to constitute the evidence in this case. Petitioners state that Judge Braig "claimed" not to have received the tape until after the rebroadcast. There is no evidence to suggest that Judge Braig did not receive the tape until Monday, October 1, 1979. Significantly, petitioners do not deny that the tape was mailed, rather than hand delivered, as had been promised by MacDonald.

On June 24, 1983, the Supreme Court of Pennsylvania denied per curiam, without opinion, Field's and Parry's Petition for Allowance of Appeal.[6]

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[6]It should be noted that under Pa.R.A.P. 1114, entitled "Considerations Governing Allowance of Appeal," the standard for allowing an appeal are the same as those set forth in the United States Supreme Court rules:

Rule 1114. Considerations Governing Allowance of Appeal

Except as prescribed in Rule 1101 (appeals as of right from the Commonwealth Court), review of a final order of the Superior Court or the Commonwealth Court is not a matter of right, but of sound judicial discretion, and an appeal will be allowed only when there are special and important reasons therefor.

Note: Based on U.S. Supreme Court Rule 19 [Now Rule 17]. The following, while neither controlling nor fully measuring the discretion of the Supreme Court, indicate the character of the reasons which will be considered:

(1) Where the appellate court below has decided a question of substance not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with applicable decisions of the Supreme Court of Pennsylvania or the Supreme Court of the United States.

(2) Where an appellate court has rendered a decision in conflict with the decision of the other appellate court below on the same question, or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an administrative agency or lower court, as to call for an exercise of the power of supervision of the Supreme Court.

(3) Where the question involves an issue of immediate public importance such as would justify assumption of plenary jurisdiction under 42 Pa.C.S. § 726 (extraordinary jurisdiction).

Amended Dec. 11, 1978, effective Dec. 30, 1978.

REASONS FOR DENYING THE WRIT

Summary of Argument

None of the reasons for granting a writ of certiorari, at least as set forth in Rule 17 of the Rules of the Supreme Court of the United States, is applicable to this case. No conflict has been cited among the decisions of Courts of Appeals which address any of the issues in this case. Since 1972, no court has considered the constitutional criteria applicable to any area said by petitioners to be at issue to be unsettled. The decision below does not conflict with any decisions of this court. Nor has there been any departure from the accepted and usual course of judicial proceedings.

I.

This Court's decisions have established a standard by which the plaintiff can present sufficient evidence to prove actual malice, and the court below properly applied this standard.

In *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968), this Court stated that a public figure plaintiff could establish reckless disregard for truth or falsity on the basis of "sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication."

The Superior Court of Pennsylvania properly applied this test in the instant matter and undertook an inquiry as to whether the respondent herein, Judge Braig, could present sufficient evidence, based on the record before the Superior Court, to take the case to the jury on the issue of actual malice.

The court's discussion of petitioner Parry's conduct makes it very clear that Parry had no basis in fact for his remarks concerning Judge Braig. For example, two rather stunning inconsistencies in Parry's testimony about his actions and his statements were pointed out by the Superior Court. Parry testified that his beliefs about Judge Braig's bias were based on an investigation of Judge Braig, particularly in prior police brutality trials. First, Parry claimed that he spoke to District Attorney Edward Rendell, who had never tried a case before Judge Braig. Rendell indicated that he never had stated that Judge Braig was biased in favor of the police and that he had personally told Judge Braig that Parry had "gone too far" in his statements on the television program. In addition, Parry testified at his deposition that he had discussed Judge Braig with "many others."

When pressed, however, it became clear from Parry's testimony that Judge Braig had been discussed with only one other district attorney. The Superior Court stated that Parry's discussion with this other assistant district attorney Parry could not provide a basis for conclusion that Judge Braig would "blow the case out." On the basis of this and other evidence, the Superior Court of Pennsylvania stated: "We hold there is a genuine issue which should be presented to the jury concerning Parry's actual malice. This evidence is sufficient to permit a jury to decide whether Parry entertained 'serious doubts' concerning the truth of his defamatory statements," *citing St. Amant, supra* at 731.

The Superior Court undertook the same analysis with respect to MacDonald, the General Manager of Channel

48. The court summarized the evidence against MacDonald and noted that Judge Braig had told MacDonald during the first telephone call that he considered this statement an attack on his integrity. He told MacDonald that he believed the words "blow out" to mean he was corrupt, immoral and unethical, and that MacDonald had told him that he, MacDonald, would be "shocked" if his employees allowed such a statement to be broadcast. However, MacDonald refused to allow Braig to come to the station to review the tape. Rather, MacDonald said he would have the tape hand delivered to Judge Braig prior to the rebroadcast. Additionally, MacDonald admitted having reviewed the tape on at least two occasions and further admitted that when Judge Braig's name was mentioned he went over it and over it and over it. On the basis of this and other evidence the Superior Court held:

> "A jury could properly infer that he had 'serious doubts' concerning the truth of the statements. Otherwise, this broadcast executive with 30 years in the industry would never had repeatedly reviewed the tape. . . ."

The Superior Court went on to state that the program was certainly not "balanced" and that "under these circumstances, a jury should decide MacDonald's 'state of mind' in deciding to rebroadcast the program over Judge Braig's objection," *citing Herbert v. Lando*, 441 U. S. 153 (1979).

Thus, the Superior Court's opinion in this case is entirely consistent with the test as established by *St. Amant v. Thompson, supra;* the Superior Court correctly undertook to ascertain whether Judge Braig had established sufficient evidence to meet the test as set forth in *St. Amant;* and its conclusion should not be disturbed.

II.

This Court's decisions have established a standard by which one can determine constitutionally protected expressions of opinion and the court below properly applied the Gertz test.

Petitioners in this case would have this court believe that the holding of *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974) with respect to the constitutional privilege for statements of opinion concerning the performance of the duties of a public official have been violated by the Superior Court of Pennsylvania. The Superior Court undertook a very careful inquiry into the facts as presented by the record and correctly applied the standards of *Gertz* to the facts before them.

It should be remembered that the show on which Parry appeared did not concern any pending case before Judge Braig but rather was supposed to address an entirely diferent case involving Police Officer Bronzeill's partner Thomas Bowe. Without justification, petitioner Parry stated:

> "Judge Braig is no friend of the Police Brutality Unit. I don't care who they sent in to try that case, in my opinion that case was going to get blown out . . . Judge Geisz didn't blow the case out."

Both the trial court and the Superior Court thought that the real issue to be addressed with respect to Assistant District Attorney Parry's words were whether or not they were capable of a defamatory meaning. Both courts reached this issue as a preliminary matter before determining whether there was sufficient evidence from which a jury could infer "actual malice" on the part of both de-

fendants. Both courts decided that these words were capable of a defamatory meaning.

In addressing the issue as to whether Parry's remarks constituted an expression of opinion within the principles announced in *Gertz v. Robert Welch, supra,* the Superior Court correctly concluded that "we are convinced they do not constitute a 'pure' expression of opinion, which would be absolutely privileged as a result of *Gertz.*" The court had stated that some of Parry's remarks concerning Judge Braig could reasonably be interpreted as a simple statement of fact, for example: "Judge Braig is no friend of the Police Brutality Unit." More importantly, the court believed that the *entire* statement made by Parry consisted of a mixture of fact and opinion and as such was not protected by *Gertz.* In so finding, the court adopted Section 566 of the Restatement (Second) of Torts (1977) as Pennsylvania law.[7]

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[7]Section 566 states:

"Expression of opinion: A defamatory communication may consist of a statement in the form of an opinion but a statement of this nature is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion."

The Court also quoted from Comment (b):

"There are two kinds of expression of opinion. The simple expression of opinion or the pure type occurs when the maker of the comment states the fact on which he basis the opinion of the plaintiff and then expresses a comment as to the plaintiff's conduct, qualifications or character. The second kind of expression of opinion or the mixed type is one which while an opinion in form or context is apparently based on facts regarding the plaintiff for his conduct that have not been stated by the defendant or seems to exist by the parties to the communication. Here the expression of the opinion gives rise to the inference that there are undisclosed facts that justify the forming of the opinion expressed by the defendant."

Having quoted at length from this section, the court went on to analyze Comment (c) of Section 566,[8] which recognizes that a pure expression of opinion, that is, one in which the defendant states certain nondefamatory facts concerning the plaintiff on the basis of which the defendant expresses a defamatory opinion, are absolutely privileged as a result of *Gertz, supra*. Thus, the Court clearly demonstrated its understanding of *Gertz*, and that only "pure" opinions, unlike the statements made by Parry, are protected by *Gertz*.

It is simply a matter of common sense to see that Assistant District Attorney Parry's comments do not come within the principles as enunciated in *Gertz*, and that the Superior Court correctly recognized this. As Judge Braig set forth in his lengthy affidavit, these remarks are obviously based on unstated facts that he, Judge Braig, had fixed certain cases against the police and police brutality cases. Also, for some other unstated reason, based on other unstated facts, Parry believed that Judge Braig was no friend of the Police Brutality Unit and that for other undisclosed facts of which only Parry was aware,

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[8]Comment (c) to Section 566 states in pertinent part:

"The distinction between the two types of expression of opinion as explained in Comment B therefore becomes constitutionally significant. The requirement that the plaintiff prove that the defendant published a defamatory statement of fact about him that was false (See Section 568) can be complied with by proving the publication of an expression of opinion of the mixed type, if the comment is reasonably understood as implying the assertion of the existence of undisclosed facts about the plaintiff that must be defamatory in character in order to justify the opinion. A simple expression of opinion based on disclosed or assumed non-defamation, no matter how unjustified or unreasonable this opinion may be or how derogatory it is."

Parry knew that Braig was unethical and corrupt. Obviously, these are not expressions of "opinion" protected by *Gertz*.

There is simply no reason for this court to review a matter in which the court below correctly followed applied principles as enunciated by this Court.

III.

There is no conflict among the courts of appeals concerning the issues raised by this case.

Petitioners assert in a footnote, without significant discussion, that "Federal Courts of Appeals and state courts of last resort which have considered the issue have reached divergent conclusions." The issue to which they are alluding is set forth in their brief as follows:

> "This Court has not yet considered the principle, advanced by Field in this case, that no liability can be imposed upon a publisher or broadcaster for the accurate and impartial transmission of statements made by one public official about the performance of official duties by another public official." (Petition at 7.)[9]

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[9]Contrary to petitioners' assertions, the Supreme Court has already addressed this issue tangentially, in *Time, Inc. v. Pape*, 401 U.S. 279 (1971). In *Pape*, Time magazine had published certain sections of a Crime Commission Report on police brutality, but had not made it strictly clear that some of these sections involved only allegations of police brutality and not proven facts. *Time* relied on the argument that petitioners seek to advance in this case; that is, that Field was acting as a mere conduit of information. While not addressing once again all the ways in which petitioners have seriously mischaracterized the facts of this case, it should be pointed out that in *Time, Inc. v. Pape*, this Court held that Time had *not* made such errors in falsification sufficient "in itself to sustain a jury finding of actual malice." *Id.* at 289.

First, as discussed at length above, this is not the issue raised by this case.[10] The statements made by Lloyd George Parry could hardly be characterized as either accurate or impartial, nor did the Superior Court so find. In addition, MacDonald obviously could have had "serious doubts" about the rebroadcast of the program, and a jury could find actual malice on the part of both of them.

Second, the cases cited by petitioners are not in conflict, even on the issue which they have incorrectly stated as the issue raised by this case. As petitioners themselves admit, and as the Third Circuit Court of Appeals made clear in *Medico v. Time, Inc.*, 643 F. 2d 134 (3rd Cir.), *cert. denied*, 454 U. S. 836 (1981), the discussion in *Dickey v. CBS, Inc.*, 533 F. 2d 1221 (3d Cir. 1978) regarding the "privilege of neutral and accurate reportage" was merely dicta. As the court in *Medico* stated:

> "Plaintiff in *Dickey* admitted that he was a public figure and could prevail on his defamation claim only if he satisfied the *New York Time's* standard of 'actual malice,' see note 25, *supra*. The Third Circuit confirmed the District Court's holding that plaintiff had failed to satisfy his burden of proof on this

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[10] It is evident from even a surface reading of the Superior Court's opinion that nowhere did the Superior Court discuss or decide that the First Amendment was subject to special exceptions for "comments concerning the alleged bias of a judge," which petitioner claims is a question presented to this court for review, nor did the Superior Court discuss or decide that the broadcaster had accurately and impartially transmitted the comments of one public official about another. No exception was made to the First Amendment for this type of "impartial" transmission; rather, it is quite apparent from the Superior Court's opinion that they found that a jury could find that Parry and MacDonald were not impartial and further that the original broadcast as presented was not balanced.

issue. Id. at 1227-29. The court's discussion of *Edward v. National Audubon Society, Inc.* was thus irrelevant to its decision."

Medico v. Time, Inc., at 145, n. 38

Medico involved a report in Time Magazine of a certain summary of F. B. I. documents, identifying the plaintiff as a member of an organized crime "family." Defendants were granted summary judgment by the trial court and plaintiff appealed. The *Medico* court held that the "fair report" privilege protected the news magazine in this instance and significantly, that plaintiff had failed to establish a genuine issue of fact concerning a possible abuse of the fair report privilege. *Id.* at 145.

This is entirely consistent with *Edwards v. National Audubon Society, Inc.*, 556 F. 2d 113, 2d Cir., *cert. denied sub nom. Edwards v. New York Times, Co.*, 434 U. S. 1002 (1977), which stands for the proposition that the accurate and disinterested reporting of newsworthy charges made by a responsible organization against a public figure, regardless of the publisher's private views regarding their validity, is privileged under the First Amendment.[11]

Edwards, of course, does *not* stand for the proposition that there is or should be an *absolute* privilege for the transmission of statements made by one public official

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[11]The holding is also consistent with the other cases cited in *Medico v. Time, Inc.* at footnote 37: *Medina v. Time, Inc.*, 439 F. 2d 1129 (1st Cir. 1971); *Oliver v. Village Voice, Inc.*, 417 F. Supp., 235, 238 (S.D.N.Y. 1976); and *Novel v. Garrison*, 338 F. Supp. 977, 982, 983 (N.D. Ill. 1971).

about another.[12] In *Edwards*, the court limited the privilege to situations in which the journalists believed "reasonably and in good faith that his report accurately conveys the charges made." The *Edwards* court set forth a shopping list of circumstances under which the privilege might not apply; for example, the journalist who espouses or concurs in the charges made by others, or who deliberately distorts statements, or who fails to allow both sides to present their reactions or thoughts, and in general, a journalist who entertains serious doubts concerning the truth of any of the charges leveled is not protected by the privilege. As the *Edwards* court unequivocally states:

> "Nor was there a shred of evidence from which the jury might have found that Devlin (the reporter) entertained serious doubts concerning the truth of Arbib's charge that the appellees were 'paid liars.'"
>
> *Id.* at 120.

All of these cases are consistent with each other and are clearly quite consistent with the decision of the Superior Court of Pennsylvania in the instant matter. In this case, the court found there was more than a "shred of evidence" on which the jury might rely in finding that MacDonald entertained "serious doubts" about rebroadcasting the "On Target" program, and the Superior Court

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[12]This is why the dicta in *McCall v. Courier Journal*, 623 S. W. 2d 882 (Ky. 1981) is clearly wrong. In a statement unnecessary to the result, the *McCall* Court opined:

> "In *Edwards v. National Audubon Society, Inc.*, 556 F. 2d 113 (2d Cir. 1977), *cert. denied*, 434 U.S. 1002, 98 S. Ct. 647, 54 L. Ed. 2d 498 (1977), [Judge Kauffman] granted the press *absolute* immunity from liability for accurately reporting 'newsworthy statements,' regardless of the press' belief about the truth of the statements." (Emphasis added.)

listed those reasons in great length in their opinion. The court also discussed at length the evidence against Parry with respect to the existence of his actual malice.

In sum, there is not a single decided case from any circuit or any state whose holding is contrary to the result reached by the Superior Court of Pennsylvania in this case, nor is there a reported decision whose language suggests that a different result would have been reached had the facts of this case been presented to any other court.

CONCLUSION

For the foregoing reasons, respondent respectfully suggests that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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